

**MINUTES
OF THE REGULAR MEETING OF THE
EDINA CITY COUNCIL
HELD AT CITY HALL
MARCH 5, 2013
7:00 P.M.**

I. CALL TO ORDER

Mayor Hovland called the meeting to order at 7:10 p.m.

II. ROLL CALL

Answering rollcall were Members Bennett, Brindle, Sprague, Swenson and Mayor Hovland.

III. MEETING AGENDA APPROVED

Member Swenson made a motion, seconded by Member Bennett, approving the meeting agenda.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

IV. CONSENT AGENDA ADOPTED

Member Swenson made a motion, seconded by Member Sprague, approving the consent agenda as follows:

IV.A. Approve regular and work session meeting minutes of February 19, 2013

IV.B. Receive payment of the following claims as shown in detail on the Check Register dated February 21, 2013, and consisting of 24 pages; General Fund \$403,490.14; CDBG Fund \$68,575.00; Police Special Revenue \$206.46; Working Capital Fund \$17,455.65; Equipment Replacement Fund \$179,706.68; Art Center Fund \$1,686.38; Aquatic Center Fund \$45.96; Golf Course Fund \$22,419.43; Ice Arena Fund \$28,874.50; Edinborough Park Fund \$19,112.41; Centennial Lakes Park Fund \$17,198.60; Liquor Fund \$177,571.61; Utility Fund \$253,195.80; Recycling Fund \$34,862.58; Centennial TIF District \$3,697.62; Grandview TIF District \$500.00; Payroll Fund \$2,106.25; TOTAL \$1,230,715.07 and for approval of payment of claims dated February 28, 2013, and consisting of 25 pages; General Fund \$129,105.88; Working Capital Fund \$70,865.54; Equipment Replacement Fund \$3,812.11; Art Center Fund \$4,975.54; Golf Dome Fund \$92.52; Aquatic Center Fund \$70.52; Golf Course Fund \$16,240.36; Ice Arena Fund \$6,815.26; Edinborough Park Fund \$2,801.95; Centennial Lakes Park Fund \$1,851.50; Liquor Fund \$179,936.49; Utility Fund \$10,177.84; Storm Sewer Fund \$246.79; PSTF Agency Fund \$17,406.27; Centennial TIF District \$825.00; TOTAL \$445,223.57; and, Credit Card Transactions dated December 27, 2012 – January 26, 2013; TOTAL \$23,421.84.

IV.C. Approve On-Sale Intoxicating, Club On-Sale, and Sunday Sale, Wine and Beer Liquor License Renewals

IV.D. Approve Park & Recreation Turf Management Plan

IV.E. Request for Purchase, Contract ENG 13-2, Normandale Neighborhood Roadway Reconstruction, awarding the bid to the recommended low bidder, Northwest Asphalt, Inc. at \$1,738,562.34.

IV.F. Request for Purchase, Contract ENG 13-3, Braemar Hills B Neighborhood Roadway Reconstruction, awarding the bid to the recommended low bidder, Northwest Asphalt at \$944,807.33.

IV.G. Request for Purchase, Contract ENG 13-4 Lake Edina Neighborhood Roadway Reconstruction, awarding the bid to the recommended low bidder, Palda & Sons, Inc. at \$3,158,445.82.

IV.H. Approve Consultant Engineering Construction Phase Services – Normandale Neighborhood Roadway Reconstruction

IV.I. Approve request to waive building permit fee for Countryside Park Renovation Project

IV.J. Waive Second Reading Adopting Ordinance No. 2013-02 amending Section 1501 of Edina City Code

Rollcall:

Minutes/Edina City Council/March 5, 2013

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland
Motion carried.

V. SPECIAL RECOGNITIONS AND PRESENTATIONS

V.A. FRANCE AVENUE PEDESTRIAN ENHANCEMENT PROJECT – UPDATE PROVIDED

Engineer Houle provided an update on the France Avenue Pedestrian Enhancement Project that was scheduled for construction from June to September of 2013. Mr. Houle answered questions of the Council related to right of way acquisition, ongoing work on urban design, and tying in to the existing bike infrastructure.

VI. PUBLIC HEARINGS HELD – Affidavits of Notice presented and ordered placed on file.

VI.A. PRELIMINARY PLAT WITH VARIANCES, RODNEY HELM ON BEHALF OF MIRIAM KISER, 5633 TRACY AVENUE – RESOLUTION NO. 2013-26 ADOPTED

Community Development Director Presentation

Community Development Director Teague presented the request of Rodney Helm, on behalf of Miriam Kiser, to subdivide the property at 5633 Tracy Avenue into two lots. The existing home would be torn down and two new homes built on the new lots. To accommodate this request, a Preliminary Plat and Lot Width Variances from 85 feet to 80 feet for each lot would be required. Mr. Teague indicated in this neighborhood, median lot area was 12,090 square feet, median lot depth was 136 feet, and median lot width was 85 feet. The new lots would meet the median area and depth but would be just short of the median width. Mr. Teague stated both staff and the Planning Commission recommended approval as the findings for variance approval had been met.

The Council asked questions of Mr. Teague relating to accommodation of storm water drainage, which would be addressed at the time of permit application. With regard to practical difficulty being tied to lot size, Mr. Teague noted if denied, this property owner would be denied a use that every other lot, including the lot to the east that was previously subdivided, had been granted.

Proponent Presentation

Miriam Kiser, proponent, stated she had lived at 5633 Tracy Avenue for 60 years.

Rodney Helm, Burnet Realty and listing agent for Ms. Kiser, indicated staff had well summarized the request and neighbors had provided only positive responses. He noted the new lots would meet 155% of the median square footage and 171% of the median length.

The Council encouraged Ms. Kiser to contact staff so an interview with the Historical Society could be scheduled to preserve the history of this property and the Kisers' original mid-century modern home.

Mayor Hovland opened the public hearing at 7:36 p.m.

Public Testimony

No one appeared to comment.

Member Bennett made a motion, seconded by Member Sprague, to close the public hearing.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland
Motion carried.

Member Bennett introduced and moved adoption of Resolution No. 2013-26, approving a Preliminary Plat with Lot Width Variances at 5633 Tracy Avenue based on the following findings:

- 1. Except for the variances, the proposal meets the required standards and ordinance for a subdivision.**
- 2. The subdivision would meet the neighborhood medians for lot area and depth, and nearly meet the median width.**

3. The proposal is consistent with the lots on this block of Tracy Avenue.
4. The 80-foot wide lot is wider than the general standard required width of 75 feet.
5. The proposal meets the required standards for a variance because:
 - a. There is a unique hardship to the property caused by the existing size of the property which is two times the size of every lot on the block.
 - b. The requested variances are reasonable in the context of the immediate neighborhood. The existing lot is both larger and wider than most properties in the area, including nearly every lot on the block. The proposed subdivision would result in two lots more characteristic of the neighborhood.
 - c. The variances would meet the intent of the ordinance because the proposed lots are of similar size to others in the neighborhood.
 - d. If the variances were denied, the applicant would be denied a use of this property, an 80-foot wide lot, which is common to the area.

And subject to the following conditions:

1. The City must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.
2. Prior to issuance of a building permit, the following items must be submitted:
 - a. Submit evidence of a Nine Mile Creek Watershed District approval. The City may require revisions to the preliminary plat to meet the District's requirements.
 - b. A curb-cut permit must be obtained from the Edina engineering department.
 - c. A grading plan subject to review and approval of the city engineer.
 - d. All storm water from the proposed homes, driveways, and westerly half of the lots shall drain to Tracy Avenue
 - e. Any disturbance to the roadway caused by the construction of the new homes must be repaired by replacing the asphalt pavement from curb-to-curb and from saw-cut to saw-cut.
 - f. A construction management plan will be required for the construction of the new homes.
 - g. Utility hook-ups are subject to review of the City Engineer.

Member Swenson seconded the motion.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VI.B. RESOLUTION NO. 2013-25 ADOPTED – APPROVING THE ISSUANCE OF OBLIGATIONS BY THE CITY OF LILYDALE, MINNESOTA TO FINANCE A PROJECT BY CALVIN CHRISTIAN SCHOOL OF MINNEAPOLIS

Finance Director Presentation

Finance Director Wallin indicated that in 2008, Calvin Christian School had requested the City issue tax exempt bonding to fund a project; however, that proposal was turned down. As a result, the School obtained taxable funding and was now requesting a public hearing to convert that taxable debt into tax-exempt conduit bank qualified debt issued by the City of Lilydale. It was noted the City of Edina would have no responsibility for the debt being proposed, if approved, and the purpose of the public hearing was to provide opportunity for residents to testify. Those comments would then be forwarded to the City of Lilydale.

Proponent Presentation

Steve Fenlon, 2042 Charlton Ridge, West St. Paul, Midwest Healthcare Capital and the Calvin Christian School's consultant, indicated if approved, the bond would be issued through the City of Lilydale to have access to bank qualification. A commercial bank would be the lender. The project scope was a building addition including a media center/library, computer lab, conference room, administrative office with health station, improvement to the front entry, a sprinkler system, extensive landscaping, and hallway with restrooms. That project cost was \$2.5 million with \$1.5 million financed through a taxable note.

Minutes/Edina City Council/March 5, 2013

Randy Kroll, Calvin Christian School Principal, presented the history of Calvin Christian School, demographics of its students, and described services/benefits brought to Edina through its outreach efforts. He indicated that the Edina campus had 30 employees who, along with 200 students, patronized Edina businesses. Mr. Kroll reported on new outreach initiatives that were underway to connect with and provide service to the neighborhood. With regard to the impact resulting from the use of tax-exempt financing versus commercial financing, it would reduce the annual debt service by \$30,000 and over the term save at least \$600,000. That savings would be of benefit to lower costs to families, equip each student in two classrooms with one-on-one technology, provide financial aid to at least eight students, or employ an additional paraprofessional to assist challenged students.

Philip Colton, attorney with Winthrop and Weinstine representing Calvin Christian School, addressed the issue of separation of church and State. He stated case law was absolutely clear that using revenue bond/conduit financing for religious organizations was appropriate. He cited several cases before the United States Supreme Court and Minnesota Supreme Court where it had been found that tax exempt/conduit financing for this type of institution was appropriate. Mr. Colton pointed out that in this case, it was known that public money would not be used for this financing as a commercial bank would refinance the bond issue. In addition, the improvements made were not related to religious purposes. Mr. Colton opined if the Council withheld a general benefit because the recipient might be religiously affiliated, it would violate the Constitution. As an Edina resident, he asked how the Council could object to the use of a City of Lilydale backed bond issue and use of private money to refinance bonds that improved an Edina school which had been in its jurisdiction for over 50 years.

Mr. Colton responded to the Council's questions related to the court's determination and indicated the court had found there was no use of public monies as it was bank financed bonds. In addition, in this case, the City of Lilydale would issue the bonds. In terms of the Statute, it contained a provision asking the local unit make a finding to support the general welfare provisions outlined in the preamble. Mr. Colton noted the bonds were used to improve a school within the district, provide education of students within the district who attended the school, and also improve property within the City's jurisdiction.

Mayor Hovland opened the public hearing at 8:05 p.m.

Public Testimony

John Heer, 4222 Scott Terrace, addressed the Council to oppose the request.

Carolyn Jackson, 5716 Continental Drive, addressed the Council to oppose the request.

Robert Stewart, 6147 Arctic Way, addressed the Council in support of the request.

James Hay, 7634 Kimberly Lane, Eden Prairie, addressed the Council in support of the request.

John Healey, 4808 Upper Terrace, addressed the Council in support of the request.

Member Swenson made a motion, seconded by Member Sprague, to close the public hearing.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

Manager Neal indicated the nature of the decision was allowable, yet discretionary. Attorney Mattick confirmed the decision was discretionary and stated if the Council decided to say no, it would need to briefly state a rationale for denial. Continuing, Mr. Mattick said his firm was not the City's bond counsel so he had not reviewed the documentation and could not offer a legal opinion.

Mr. Wallin advised that the resolution under consideration had been provided to Dorsey Whitney, the City's bond counsel. Jerry Gilligan, Dorsey Whitney, indicated he saw no issue of concern with the resolution. Member Bennett noted there was no written opinion before the Council from either the City's bond counsel or from the City Attorney. Mr. Neal stated the only thing not "ordinary" about Calvin Christian School's request was the fact that a public hearing was required to be held in Edina; while another city would be issuing the conduit financing. He reiterated that granting the request was at the discretion of the Council.

Mr. Colton commented on the 1984 Rostenkowski statement paper relating to issuance of bank-qualified tax-exempt bonds and ability to access unused issuance capacity of municipalities, subject to public hearing by the municipality with jurisdiction over the site.

With regard to the Statute 469.154 requirement that a governing body finds the project furthers the purpose of prevention of "occurrence of conditions requiring redevelopment, or aid in the redevelopment of existing areas of blight, marginal land or avoidance of substantial and persistent unemployment ~~to find a general benefit~~. Mr. Mattick stated the improvement had already been made so that general benefit could be found. Relating to the public testimony indicating the \$30,000 savings to the school would directly result in a \$30,000 loss to the taxing system, Mr. Wallin stated he was not sure there was a direct correlation between the two as it was dependent on the banking system and amount of debt. Attorney Mattick agreed with the proponent's comment that this consideration had been often made. Mr. Mattick stated he was not aware of any cases being challenged and overturned.

Next, Mayor Hovland asked Mr. Mattick if the Supreme Court cases had involved higher education institutions, as pointed out by Carolyn Jackson. Mr. Mattick confirmed that was the case, but that actual issuance in Minnesota had been made to high schools.

The Council discussed the request and asked questions of staff. Member Swenson indicated Calvin Christian School was a great school; however, she had not supported the 2008 request and her position had not changed. She noted the school teaches creationism versus evolution, which in her mind crossed the line for separation of church and state. Member Bennett indicated, consistent with her decision in 2008, she would vote against the request. She supported use of public resources to support public entities/goals and that had been the City's use of conduit funding in the past. She agreed with Member Swenson, noting that Calvin Christian School's own materials described the school as providing "Christian education that does not divide life into secular and sacred parts."

Members Sprague and Brindle voiced support for the request as it met the statutory and constitutional test, resulted in general benefit to the community, and secular use of funds. Mayor Hovland indicated he would reverse his 2008 position against as the proponent had presented additional information to meet the constitutional test by proving a secular purpose that would not violate separation of church and state. **Member Sprague introduced and moved adoption of Resolution No. 2013-25, approving the issuance of obligations by the City of Lilydale, Minnesota, to finance a project by Calvin Christian School of Minneapolis.** Member Brindle seconded the motion.

Ayes: Brindle, Sprague, Hovland

Nays: Bennett, Swenson

Motion carried.

VII. COMMUNITY COMMENT

No one appeared to comment.

VIII. REPORTS / RECOMMENDATIONS

VIII.A. APPOINTMENTS TO ADVISORY BOARDS, COMMITTEES, AND COMMISSIONS – CONFIRMED

Minutes/Edina City Council/March 5, 2013

Mayor Hovland presented the slate of appointments. **Mayor Hovland made a motion, seconded by Member Bennett, confirming the following appointments with three year terms ending February 1, 2016 unless noted differently: Edina Art Center Board – Kandace Ellis partial term ending 2/1/2015 and Paul Peterson; Community Health Committee – Melinda Bothun-Hurley partial term ending 2/1/2014, Nadia Martyn partial term ending 2/1/2015, Alison Pence partial term ending 2/1/2014, and Joel Stegner; Construction Board of Appeals – Michael Birdman partial term ending 2/1/2014, Tim Cross, Kip Peterson partial term ending 2/1/2014, and Susan Lee partial term ending 2/1/2015; Energy & Environment Commission – John Howard; Heritage Preservation Board – Tracy Holtan, Connie McDermott, Tim O'Brien, and Ryan Weber; Human Rights & Relations Commission – Laura Davis partial term ending 2/1/2015 and Leslie Lagerstrom partial term ending 2/1/2014; Planning Commission – Claudia Carr; Transportation Commission – Dawn Spanhake; and Park Board – Joseph Hulbert – reappointed to partial term ending 2/1/14.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VIII.B. RESOLUTION NO. 2013-27 ADOPTED – SUPPORTING LEGISLATION FOR STREET IMPROVEMENT DISTRICTS

Engineer Houle presented the draft resolution supporting legislation that had been introduced into the House and Senate that would allow cities to establish street improvement districts. He answered questions of the Council and indicated if adopted; it would provide latitude to create a funding mechanism to pay for road projects, potentially reducing assessments currently paid by property owners. It was noted the terms for a “district” would need to be defined. **Member Swenson introduced and moved adoption of Resolution No. 2013-27, supporting legislation for Street Improvement District.** Member Sprague seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

IX. CORRESPONDENCE AND PETITIONS

IX.A. PETITION CIRCULATED BY EMILY BOETTGE REQUESTING SIDEWALK – RECEIVED

Member Bennett made a motion, seconded by Member Sprague, receiving the petition circulated by Emily Boettge requesting sidewalks for the Cornelia Elementary School Public School Zone/Walking Shed and referring the petition to Engineering.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

The Council expressed its appreciation to Ms. Boettge and residents for their work to bring forward this matter.

IX.B. CORRESPONDENCE

Mayor Hovland acknowledged the Council's receipt of various correspondence.

IV.C. ENERGY & ENVIRONMENT COMMISSION ADVISORY COMMUNICATION – URBAN FORESTS TASK FORCE – REINSTATED

Member Bennett made a motion, seconded by Member Brindle, approving the request of the Energy & Environment Commission to reinstate the Urban Forest Task Force to the 2013 EEC Work Plan.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

IX.D. MINUTES:

1. **PLANNING COMMISSION, FEBRUARY 21, 2013**
2. **ENERGY & ENVIRONMENT COMMISSION, DECEMBER 13, 2012 AND JANUARY 10, 2013**
3. **HERITAGE PRESERVATION BOARD, JANUARY 8, 2013**
4. **TRANSPORTATION COMMISSION, JANUARY 17, 2013**

Informational; no action required.

IX.E. EDINA TRANSPORTATION COMMISSION COMMUNICATION COMMITTEE RECOMMENDATIONS – RECEIVED

The Council acknowledged receipt of the Edina Transportation Commission Communication Committee recommendations related to development of a Comprehensive Communication Plan and referred it to staff for prioritization.

X. MAYOR AND COUNCIL COMMENTS – Received

XI. WOODDALE CENTERLINE VARIANCE REQUEST – DISCUSSED

The Council discussed whether to request a variance from MnDOT for the Wooddale centerline to address traffic safety and asked staff to schedule this topic for a workshop discussion. **Member Swenson made a motion, seconded by Member Sprague, directing staff to bring forward a report that would give an update of the Federal Highways Experiment that provides traffic data and also options to create a safer feeling roadway such as create bump out areas and a resolution to request a variance from MnDOT to place a centerline along Wooddale Ave between 50th St and Valley View Rd.**

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

XI. MANAGER'S COMMENTS – Received

XII. ADJOURNMENT

There being no further business on the Council Agenda, Mayor Hovland declared the meeting adjourned at 9:38 p.m.

Respectfully submitted,

Minutes approved by Edina City Council, March 19, 2013.

Jane Timm, Deputy City Clerk

James B. Hovland, Mayor

Video Copy of the March 5, 2013, meeting available.